

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2018-320-E**

IN RE: Joint Application of Duke Energy)
Carolinas, LLC and Duke Energy)
Progress, LLC to Establish Green Source)
Advantage Programs and Riders GSA)
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**FINAL COMMENTS
OF THE
SOUTH CAROLINA SOLAR
BUSINESS ALLIANCE, INC.**

Overview of SCSBA’s GSA Program Recommendations Submitted to This Commission on January 7, 2019.

In the South Carolina Solar Business Alliance, Inc.’s, (“SCSBA”) original Comments filed with this Commission, the SCSBA outlined its support for the creation of viable clean energy programs designed to meet the growing demand for renewable energy from commercial and industrial customers in South Carolina. The SCSBA referenced the recent report from the SC Office of Regulatory Staff, *Discussion of South Carolina Act 236: Version 2.0*, which contains a section on commercial and industrial renewable energy programs and notes that, “These larger customers are increasingly demanding choices better suited to meeting their energy and sustainability goals, and utilities across the country are responding with a variety of programs, commonly referred to as Green Tariffs.”¹

As an example of corporate expectations for clean energy programs targeted at the commercial and industrial customer class, the SCSBA highlighted the principles adopted by a large number of corporations that are actively seeking enhanced access to clean energy. These clean energy access principles include greater choice in procurement and cost competitive options; the ability to lock in rates to provide energy price certainty and avoid fuel price volatility; and increased access to standardized and simplified processes, contracts, and financing for renewable projects.²

The SCSBA also outlined its partial support for Duke Energy’s proposed GSA Program as one potential option that could work for certain utility customers. However, the SCSBA documented several shortcomings of Duke Energy’s limited GSA Program offering. The most notable of these is that Duke Energy’s proposed GSA program only works for the largest and

¹ *Discussion of South Carolina Act 236: Version 2.0*, December 2018, Energy and Environmental Economics, Inc. at 40

² See Corporate Renewable Energy Buyers’ Principles; <https://buyersprinciples.org/>

most sophisticated customers. In designing its program, Duke failed to consider the diversity of customers in its commercial and industrial rate classes, or to ensure a fair and reasonable opportunity for broader customer participation.

The SCSBA recommended that this Commission amend Duke Energy's GSA Program proposal in the following ways:

1. Customers must have a contract demand of at least one (1) MW at a single location or five (5) MW at multiple locations to participate in the GSA Program.
2. Duke Energy must make all GSA Service Agreement documents, including its proposed Power Purchase Agreement, available for review by this Commission and Intervenors prior to program approval.
3. Duke Energy will offer an Alternative Bill Credit that is based on its administratively-determined avoided costs and fixed for an initial period equal to the shorter of (i) the term of the GSA Service Agreement, (ii) ten years, or (iii) such shorter period as may be mutually agreed to by Duke and the GSA Customer.
4. For a GSA Service Agreement with a term of ten years or longer, the initial fixed term of the bill credit shall be ten years unless shortened by mutual agreement of the parties.
5. Where the GSA Service Agreement has a term that exceeds the initial fixed term of the bill credit, the bill credit for subsequent years shall be "refreshed" for the subsequent fixed term.
6. Unless otherwise mutually agreed to by the parties, the duration of the subsequent fixed term of the bill credit shall be equal to the shorter of (i) the remainder of the term of the GSA Service Agreement, or (ii) ten years.
7. The initial avoided cost rates for the initial bill credit are based upon the Commission's most recently approved avoided cost methodology in effect at the time that the Commission approves the GSA Program. The bill credit for any subsequent term will equal Duke's avoided cost rates based on the Commission's most recently approved avoided cost methodology in effect at the time of the "refresh".

SCSBA Response to Duke Energy's Reply Comments.

Providing for an Alternative Bill Credit Based on Avoided Costs

Duke Energy disputes that its administratively-determined avoided cost rates provide a sufficient basis for determining a bill credit for GSA Program participants and that its variable day-ahead real-time hourly rate is a more reasonable metric. Duke Energy argues that its variable day-ahead real-time hourly rate achieves the company's goal of holding non-participating customers financially neutral and insulates those customers from risk associated with using administratively-determined avoided costs.³

³ Duke Energy Reply Comments, at p.14.

The SCSBA disagrees. Duke Energy's preference for offering a single GSA Program bill credit based on its variable day-ahead real-time hourly rate, which is not reviewed or approved by this Commission, is misguided. The variable day-ahead real-time hourly rate reflects a short-term marginal energy rate that does not adequately value avoided and deferred capacity or other grid services accounted for in administratively-determined avoided cost, nor does the day-ahead pricing metric recognize the benefits of diversifying Duke Energy's resource mix away from regulatory and market risks in favor of fixed, known costs.

Administratively-determined avoided cost is a utility industry benchmark meant to ensure that customers are held financially neutral when the utility purchases power from an independent power producer instead of generating it at utility-owned facilities. Currently, Duke Energy's administratively-determined avoided costs are relied on by customers and this Commission for an array of issues, including determinations related to the cost-effectiveness of utility demand side management and energy efficiency programs and investments, as well as for determining the appropriate rates offered to independent power producers for the sale of electricity to Duke Energy through both standard offer and negotiated contracts.

Duke Energy claims that long-term fixed contracts that utilize administratively determined avoided cost are "inherently risky" for non-participating customers and that a variable day-ahead real-time hourly rate represents the company's "actual avoided cost of energy"⁴. This opinion is at odds with federal law⁵ as well as multiple precedents set by this Commission that are detailed below.

Duke Energy fails to acknowledge the reality that a purely variable bill credit, such as the proposed day-ahead real-time hourly rate, exposes non-participating customers to just as much risk as a bill credit based on long-term fixed rates. With a fixed long-term rate, the risk is that actual energy and capacity prices will be lower than the long-term rates when energy is actually delivered (though of course a bill credit that is lower than the actual cost of generation will benefit Duke's nonparticipating customers). A variable credit exposes nonparticipating customers to the risk that Duke Energy's system generation costs at the time of delivery will ultimately exceed current expectations, as embodied in administratively-determined avoided costs.⁶ **So while a variable bill credit may ultimately match actual costs at the time of delivery, that will not necessarily make non-participating customers any better off.** And variable rates will certainly leave participating customers, who attach significant value to long-term rate certainty, worse off than a bill credit based on avoided costs.⁷

⁴ Duke Energy Reply Comments, at p.13.

⁵ Public Utility Regulatory Policies Act, Pub.L. 95-617, 92 Stat. 3117, enacted November 9, 1978

⁶ Higher than expected load growth, accelerated electric vehicle adoption, fuel supply constraints or demand increases, and new environmental regulations are just a few of the factors that could lead to variable day-ahead real-time hourly rates that significantly exceed 10-year fixed avoided cost rates.

⁷ The FERC has long understood that, over the long term, avoided cost rates will sometimes be lower than actual prices, and sometimes be higher – and that, that, "in the long run, 'overestimations' and 'underestimations' of avoided costs will balance out," leaving ratepayers held harmless. FERC Order No. 69, 45 Fed. Reg. 12221, 12224 (Feb. 25, 1980). It is also worth noting that having a variety of GSA customers with fixed bill credits based on avoided cost rates set at a variety of times will diversify the risk of overpayment or underpayment under those contracts, further mitigating any risk to nonparticipating customers.

Duke's insistence that long-term rates are inappropriate is also inconsistent with the Company's (or its affiliates') approach to long-term rates and contracts in other contexts.

For example, Duke Energy's subsidiary, Duke Renewables, develops solar projects based on long-term fixed price contracts that average well over 10 years in length.^{8,9} Presumably Duke Energy does not believe that its subsidiary is actively engaged in business practices that place undue risk on the ratepayers of other states.

In another open docket before this Commission, Duke Energy has requested and received approval for special treatment of South Carolina solar projects that bid into the company's CPRE Program in North Carolina¹⁰. The projects will be selected through a competitive solicitation with the winning bids receiving 20-year fixed price contracts that may be priced as high as the utility's most recently approved avoided cost rates. In that context Duke has acknowledged the benefit to ratepayers of procuring QF power under long-term rates. (Although SCSBA acknowledges that CPRE contracts give the company limited curtailment and dispatch rights that it does not have with regard to other QFs, it's not the case that these rights are necessary to mitigate some "harm" to ratepayers that would otherwise result from those 20-year contracts.) The relatively short-term fixed bill credit proposed by SCSBA in this docket exposes ratepayers to far less of the alleged "risk" that, by Duke's logic, would result from the procurement of solar power under those 20-year CPRE contracts.

Furthermore, as this Commission is aware, standard offer contracts for solar energy and capacity in South Carolina are set at the utility's avoided cost rate and are available for a 10-year fixed term. SCE&G/Dominion routinely file solar power purchase agreements with this commission for fixed terms longer than ten years, and this Commission recently accepted a merger settlement agreement between the SCSBA and SCE&G/Dominion that ensures 10-year fixed price contracts will be made available by the company to small power producers for at least another five years.

Additionally, current legislation approved in the SC House of Representatives with a unanimous vote of 110-0 would require that a utility offer contracts for the purchase of solar energy and capacity with minimum 10-year terms until solar penetration reaches at least twenty (20) percent of the utility's previous 5-year retail average peak load¹¹. On March 6, 2019, Duke Energy's head of resource planning for the Carolinas, Glen Snider, testified before the South Carolina Senate Judiciary Subcommittee that the company would support fixed price PURPA contracts for terms up to ten years. The same legislation, H.3659, would moreover explicitly empower this Commission to allow for a fixed bill credit option as part of a commercial and industrial clean energy program. This legislation has received broad support from commercial

⁸ Duke Renewables Solar Projects Factsheet. 2017. https://www.duke-energy.com/_/media/pdfs/our-company/solar-power-projects-fact-sheet.pdf

⁹ The average contract length for projects developed by Duke Renewables is based on information collected by SCSBA from publicly available sources, including CPCNs and media publications.

¹⁰ See South Carolina Public Service Commission Docket 2018-202-E

¹¹ *South Carolina Energy Freedom Act*, H.3659, Session 123 (2019-2020).

and industrial businesses across South Carolina that view access to clean energy as essential to their corporate energy strategies¹².

Bizarrely, Duke Energy suggests that the North Carolina Utilities Commission Public Staff has taken a position contrary to that outlined by the SCSBA in our original comments and recommendations. Duke Energy defends this suggestion by referencing partial and potentially misleading language used by the Public Staff in testimony before the NCUC: “to reduce the risk of forecast error, [] the initial terms of the bill credit should not exceed 10-years, and also be subject to periodic refreshes or resets to ensure that the rate stays on alignment with current information on energy prices.”¹³ To be clear, the Public Staff was arguing there against fixed price contracts for **20-year** PPAs and in support of a maximum 10-year fixed price bill credit option.¹⁴

Duke Energy’s critique of long-term fixed contracts also fails to acknowledge the current utility business model for building generation in South Carolina’s vertically integrated market. When Duke Energy builds a new generation resource, that asset is depreciated over the useful life of the generating facility, which means Duke Energy relies on fixed, predictable long-term cost recovery for long-term assets. This requires projections that span multiple decades to justify billions of dollars of investment in generation, transmission and distribution.

In contrast, the SCSBA is proposing that 30-year solar assets with no variable costs receive a 10-year fixed avoided cost bill credit, which would substantially mitigate risk to ratepayers as compared to traditional utility investments.

As Duke Energy acknowledges, the GSA Program and the proposed bill credit mechanism create risk and complexity that is more easily managed by its larger, sophisticated customers like Walmart, which reflects the customer profile the program is intended to benefit¹⁵. However, as noted in SCSBA’s previous comments in this docket, relying solely on a variable metric that requires a high level of customer sophistication for participation, the value of which is wholly computed by the utility, will reduce GSA Program participation by many commercial and industrial customers while also limiting this Commission’s oversight of how those values are being calculated.

A bill credit based on administratively-determined avoided cost is a fair and transparent mechanism that allows customers to negotiate cost-effective power purchase agreements with clean energy developers, and to recognize any savings that are created between the contracted rate and the administratively-determined avoided cost. Because all administrative costs are borne by program participants, this arrangement leaves non-participating customers financially neutral to the transaction while creating a savings opportunity for participating GSA customers that are able to negotiate favorable terms in the clean energy marketplace.

¹² See Appendix 1

¹³ Duke Energy Reply Comments, p. 16.

¹⁴ See North Carolina Utilities Commission docket E-2, Sub 1170 and E-7, Sub 1169 DEP, LLC and DEC, LLC Oral Argument at p. 151

¹⁵ Duke Energy Reply Comments, at p. 11-12.

Transparency for GSA Service Agreements

The SCSBA maintains that the terms and conditions of the GSA Service Agreement, including the Power Purchase Agreement, should be made available to this Commission and Intervenor for review and comment prior to any approval of the GSA Program. Given the scale of investment and the contract lengths anticipated for the GSA Program, transparency related to the program's standard terms and conditions remains a threshold issue for the SCSBA.

Program Participation Requirements

In response to Intervenor comments, Duke Energy has proposed that GSA Program participants must have a contract demand equal to one (1) MW, instead of three (3) MW, at a single location or aggregate contract demand of five (5) MW at multiple locations to qualify for this program. The SCSBA supports this change and believes that lowering the threshold to one (1) MW at a single location will provide broader access to this program within the customer classes Duke Energy is targeting, by increasing the likelihood that smaller customers who would otherwise have little access to low-cost clean energy resources are also able to participate.

Update on the North Carolina Utilities Commission docket E-2, Sub 1170 and E-7, Sub 1169

The North Carolina Utilities Commission (NCUC) issued its order to modify and approve the NC Green Source Advantage Program on February 1, 2019. The order rejected a wide variety of Duke's proposed program design elements and upheld multiple concerns expressed by intervenors, including but not limited to the following:

- The NCUC rejected Duke's proposed combination of GSA and CPRE and Duke's proposal to link the GSA PPA price to CPRE bid prices;
- The NCUC rejected Duke's proposed restrictions on the ability of customers to negotiate with suppliers over price terms under a self-supply option, ensuring that customers and suppliers be allowed to negotiate PPA price, tenor, and bundled PPAs;
- The NCUC rejected Duke's proposal that GSA PPAs allow Duke full economic dispatch rights and disallowed curtailment beyond system emergencies, as with existing PURPA QFs; and
- The NCUC will allow further intervenor comments on the GSA PPA, GSA Service Agreement, GSA Term Sheet, and other documents.

In terms of the bill credit, the NCUC concurred with intervenors and rejected Duke's original proposal to disallow a fixed bill credit option based on the avoided cost rate. Instead, the NCUC required that a fixed, multi-year bill credit option be made available to GSA customers, based on the most recent NCUC-approved avoided cost methodology. As stated in the NCUC order, "for the bill credit options based on the Commission's implementation of PURPA, the Commission expects the utility to 'design [the bill credit] rates consistent with the most recent Commission-approved avoided cost methodology' and to use 'up-to-date data in determining the inputs for negotiated avoided cost rates,' updated at the time of the submission of the GSA Service Agreement."

Where the NCUC's order departed from intervenors was in limiting the maximum tenor of the fixed bill credit option to five years, instead of providing a tenor of at least ten years as requested by the vast majority of potential GSA customers. However, in recognition of the majority opinion's problematic stance on this issue, three of the Commissioners wrote concurring opinions calling for a bill credit term longer than five years, with one Commissioner concurring and dissenting. As the dissenting Commissioner wrote, "for the GSA Program to be successful, a ten-year fixed bill credit option is needed to help ensure the General Assembly's goal in attracting these customers to the Program." As another Commissioner wrote, "I conclude that a bill credit term of 10 years is more likely to enable participation in the program by certain customers—including those public institutions identified in the statute and for which 350 MW of the total 600 MW is specifically set aside in the statute—than a shorter term."

As warned by Intervenors, the response to the NCUC's opinion limiting the fixed bill credit option to five years was swift and definitive, with NC's largest potential GSA customer, UNC-Chapel Hill, immediately declaring that it would not participate in the program. As the *Charlotte Business Journal* reported on February 5, 2019, "The University of North Carolina at Chapel Hill says flatly that it will not participate in the program, as now adopted... 'The level of risk (for energy purchasers) is unacceptable,' says Brad Ives, chief sustainability officer for the Chapel Hill campus. 'It really does preclude participation by us or by any university in the UNC system.'"¹⁶ As the UNC system was reserved 250 MW of NC's 600 MW GSA program, the NCUC's opinion on the fixed bill credit tenor thus renders at least 42% of the program unusable. In addition, the 100 MW (18%) reserved for the Department of Defense will very likely go unused, and it remains to be seen whether any customers utilize the program except Walmart.

Final SCSBA GSA Program Recommendations

The SCSBA recommended that this Commission amend Duke Energy's GSA Program proposal in the following ways:

1. Duke Energy must make all GSA Service Agreement documents, including its proposed Power Purchase Agreement, available for review by this Commission and Intervenors prior to program approval.
2. Duke Energy will offer an Alternative Bill Credit that is based on its administratively-determined avoided costs and fixed for an initial period equal to the shorter of (i) the term of the GSA Service Agreement, (ii) ten years, or (iii) such shorter period as may be mutually agreed to by Duke and the GSA Customer.
3. For a GSA Service Agreement with a term of ten years or longer, the initial fixed term of the bill credit shall be ten years unless shortened by mutual agreement of the parties.
4. Where the GSA Service Agreement has a term that exceeds the initial fixed term of the bill credit, the bill credit for subsequent years shall be "refreshed" for the subsequent fixed term.

¹⁶ "Critics pan NC regulators' compromise on Duke Energy renewables program for large users." John Downey. *Charlotte Business Journal*. February 5, 2019. <https://www.bizjournals.com/charlotte/news/2019/02/05/critics-pan-nc-regulators-compromise-on-duke.html>

5. Unless otherwise mutually agreed to by the parties, the duration of the subsequent fixed term of the bill credit shall be equal to the shorter of (i) the remainder of the term of the GSA Service Agreement, or (ii) ten years.
6. The initial avoided cost rates for the initial bill credit are based upon the Commission's most recently approved avoided cost methodology in effect at the time that the Commission approves the GSA Program. The bill credit for any subsequent term will equal Duke's avoided cost rates based on the Commission's most recently approved avoided cost methodology in effect at the time of the "refresh".

Respectfully Submitted,

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